

**MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 29, 2024*****SUPREME COURT - CRIMINAL CASES*****CHATMAN V. STATE****CRIMINAL - FELONY**

**CRIMINAL LAW - JURY VERDICTS - AMBIGUITY** - An ambiguous jury verdict occurs when the jury’s decision does not clearly indicate which charge the defendant was found guilty of

**CRIMINAL PROCEDURE - INVALIDATION OF GREATER OFFENSE - DIRECT REMAND RULE** -

When the jury convicts of a greater offense, which is invalidated on appeal for want of sufficiency of the evidence, no new trial is required, and the defendant may be remanded for sentencing upon the lesser-included offense where the proof establishes proof of the lesser offense

**FACTS**

A jury convicted Derrick Chatman of two counts of sexual battery. The trial court instructed the jury on both sexual battery and the lesser-included offense of gratification of lust. The trial court also instructed the jury that the verdict forms had to be written as specified in the instructions provided. The jury returned verdicts stating “guilty” for both counts but did not specify whether the convictions were for the sexual battery counts or the lesser offense of gratification of lust. The trial court sentenced Chatman to thirty years on each count, to run consecutively. Chatman appealed.

**ISSUE**

Whether the jury’s verdict was ambiguous and not fully responsive to the instructions given.

**HOLDING**

Because the jury’s verdict was not fully responsive to the instructions provided, and because the jury’s verdict did not clearly state whether it intended to find the defendant guilty of sexual battery or the lesser offense gratification of lust, Chatman’s convictions for sexual battery could not stand. Therefore, the Supreme Court reversed and remanded the judgment of the Adams County Circuit Court.

**Reversed & Remanded - 2023-KA-00583-SCT (Aug. 29, 2024)**

Opinion by Justice Beam

Hon. Deborah Blackwell (Adams County Circuit Court)

Lance O’Neal Mixon & Joshua Michael Cassidy (Pub. Def. Office) for Appellant - Danielle Love Burks (Att’y Gen. Office) for Appellee

Briefed by [Zuri Williams](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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**MCCLAIN V. STATE****CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - ARGUABLE ISSUES - LINDSEY BRIEF** - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant, counsel may file a brief indicating in good faith a lack of arguable issues on appeal and request an extension so the defendant can file a pro se brief

**CRIMINAL PROCEDURE - SUPPLEMENTAL BRIEF - FAILURE TO FILE** - When failing to file a supplemental pro se brief during an appeal as a matter of right, and no arguable issues have been presented, the appellate court may independently review the record to determine whether any arguable issues exist

### **FACTS**

In July 2022, Jimmy Charles McClain lived with his mother in Quitman County. McClain’s nephew visited one night and found McClain threatening his grandmother with a handgun and firing it into the air. The nephew called authorities. Officers found McClain in a tool shed doorway with a handgun in his lap and a shotgun at his side. After initially threatening the officers, McClain surrendered the weapons. McClain was indicted for felon in possession of a firearm based on a 1991 felony conviction for sale of a controlled substance. At trial, the State presented evidence including McClain’s prior conviction record and photographs of the firearms. McClain testified in his defense and admitted to the prior conviction. McClain claimed that he did not remember the incident that led to his present charges due to blacking out from not taking his heart medication. On cross-examination, McClain stated that he was out of his medication and could not take it. However, during direct examination, McClain had testified that officers retrieved his medication from his house the next day. McClain also stated he had plenty to get him through the month, contradicting his claim of being out of medication. McClain was convicted of possession of a firearm by a felon. McClain appealed.

### **ISSUE**

Whether there were any arguable issues on appeal to overturn McClain’s possession of a firearm by a convicted felon conviction.

### **HOLDING**

Because McClain’s counsel found no arguable issues for appeal, because McClain did not file a pro se brief, and because the Court conducted an independent and thorough review of the record and found no appealable issues, there were no arguable issues on appeal to overturn McClain’s possession of a firearm by a convicted felon conviction. Therefore, the Supreme Court affirmed the judgment of the Quitman County Circuit Court.

**Affirmed - 2023-KA-01189-SCT (Aug. 29, 2024)**

Opinion by Justice Maxwell

Hon. Charles E. Webster (Quitman County Circuit Court)

Zakia Butler & George T. Holmes (Pub. Def. Office) for Appellant - Katy Taylor Sarver (Att’y Gen. Office) for Appellee

Briefed by [James Riley](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 27, 2024**

### ***COURT OF APPEALS - CIVIL CASES***

#### **ALEXANDER V. METRO. Y.M.C.A.**

#### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - SUMMARY JUDGMENT - MOVANT’S BURDEN** - The moving party bears the burden of proving (1) no genuine issue of material fact exists, and (2) on the basis of the facts established, the moving party is entitled to judgment as a matter of law

**CIVIL PROCEDURE - SUMMARY JUDGMENT - NON-MOVANT'S BURDEN** - In response to a motion for summary judgment, the non-movant bears the burden to produce sufficient evidence for his claim at the summary judgment stage, as he would carry that burden to trial

**CIVIL PROCEDURE - SUMMARY JUDGMENT - EVIDENTARY STANDARD** - A non-movant's pleadings alone are not sufficient to defeat a motion for summary judgment

### **FACTS**

After nearly drowning at a YMCA in Flowood, Firnist Alexander filed suit against the Metropolitan YMCA's of Mississippi ("YMCA") for failing to have a trained lifeguard on the premises, failing to rescue him in a reasonable time, and failing to prevent him from ingesting impurities that he would later have pumped from his stomach. As part of discovery, Alexander admitted in a deposition that he did not know who rescued him from the pool, as he had lost consciousness by that point. Alexander also made no efforts to designate any witnesses or conduct any depositions for a span of three years. Following an extensive series of pretrial motions, including a motion to strike YMCA's motion for summary judgment and two separate pretrial hearings regarding the various motions, the circuit court granted summary judgment to YMCA. The circuit court found that Alexander failed to produce evidence that would produce a dispute of material fact. The circuit court acknowledged that Alexander was given multiple opportunities by the court to procure the necessary evidence to overcome summary judgment but failed to do so. Despite this, Alexander still filed his response to the motion for summary judgment after summary judgment was granted. Alexander further filed motions for reconsideration and to compel discovery. The trial court denied both, noting that the dismissal was final. Alexander appealed.

### **ISSUE**

Whether the circuit court erred in granted summary judgment.

### **HOLDING**

Because YMCA met its burden to show, through its deposition of Alexander, no genuine dispute of facts for the negligence elements of breach and causation, and because Alexander failed to produce evidence to establish negligence beyond his pleadings and failed to file his response brief for his motion to strike on time with the circuit court, the circuit court did not err in granting summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2022-CP-01092-COA (Aug. 27, 2024)**

Opinion by Judge Westbrook

Hon. Steve S. Ratcliff III (Rankin County Circuit Court)

*Pro se* for Appellant - Preston Ormond Lee for Appellee

Briefed by [Grant Hughes](#)

Edited by [Summie Carlay](#) & [William Davis](#)

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## **SIGGERS V. STATE**

### **CIVIL - OTHER**

**CRIMINAL PROCEDURE - HABEAS CORPUS - UNLAWFUL DETENTION** - Habeas corpus pleadings are filed prior to a petitioner's conviction to protest the legality of their detention and to release any unlawfully detained petitioners or grant them bond

**POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS** - The denial of a post-conviction relief motion is a final judgment and bars subsequent requests for post-conviction relief unless (1) there are issues with the defendant's supervening insanity prior to the execution of a death sentence; (2) there has been an intervening decision of the United States Supreme Court or of the Mississippi Supreme Court, which would require a different outcome or sentence; (3) there is newly discovered evidence, which was not previously discoverable, that would have been practically

conclusive if it were available at trial; or (4) the defendant claims that his sentence has expired, or his probation, parole, or conditional release has been unlawfully revoked

## **FACTS**

While on conditional parole for murder, Reno Fenelli Siggers committed an act of simple domestic violence in May of 2018, and he committed an act that resulted him being charged with aggravated domestic violence in June of 2018. Siggers’s simple domestic violence charge resulted in his parole being revoked in July of 2018, and he was sentenced to serve 120 days in a technical violation center. In November of 2018, he was released on parole. In August of 2019, Siggers’s parole was revoked again for the aggravated domestic violence charge. In March of 2020, he was released on parole. In March of 2021, Siggers was arrested and charged with aggravated domestic violence and simple domestic violence. Siggers tested positive for marijuana, and the parole board issued a retake warrant while Siggers was still incarcerated on the new charges. In May of 2021, while incarcerated, Siggers filed a pro se pleading, which he titled “Habeas Corpus”, challenging the legality of his incarceration on the new charges and arguing that he was being illegally held on a parole violation because he had not received a timely final revocation hearing. In his pleading, Siggers stated that he was tried and convicted of murder in 1995. He was sentenced to serve a term of life imprisonment. The circuit court treated the “Habeas Corpus” as a post-conviction relief (“PCR”) motion and dismissed it for lack of jurisdiction. On appeal, the court found that Siggers was not required to obtain permission from the Mississippi Supreme Court before filing his pleading because his conviction and sentence were not directly appealed. Therefore, the court reversed the circuit court’s order of dismissal and remanded the matter for further proceedings. In January of 2023, Siggers filed a PCR motion based upon a claim that his parole had been unlawfully revoked. This motion was filed in the same cause number as the “Habeas Corpus” and not under a new civil cause number. In February of 2023, the circuit court filed an order, dealing only with matters the court remanded and again treating the “Habeas Corpus” pleading as a PCR motion, finding that Siggers had not met the burden to prove ineffective counsel assistance and that the failure to timely conduct the revocation hearing was harmless. Siggers appealed.

## **ISSUES**

Whether the trial court erred in (1) treating Siggers’s “Habeas Corpus” pleading as a PCR motion and (2) denying Siggers’s claims for relief.

## **HOLDING**

(1) Because the “Habeas Corpus” pleading challenged what Siggers contended to be a prolonged detention and his detention without a timely final hearing, the trial court erred by treating the “Habeas Corpus” as a PCR motion, but, because the issue presented became moot once the final revocation hearing was held, the circuit court did not err in denying the “Habeas Corpus.” (2) Because Siggers timely filed his PCR motion and the circuit clerk failed to file the action under a new civil cause number, Siggers’s PCR motion filed in January of 2023 must be considered through the regular statutory process. Therefore, the Court of Appeals affirmed and remanded the judgment of the Tunica County Circuit Court.

## **CONCURRENCE IN PART AND DISSENT IN PART**

Judge McDonald argued that Siggers’s original pleading was properly considered as a PCR motion under the Uniform Post Conviction Collateral Relief Act and the circuit court erred in denying the PCR motion. She also argued that Siggers raised critical due process violations with good cause that warranted a full-evidentiary hearing and that the circuit court abused its discretion in not ordering the parole board to respond.

### **Affirmed & Remanded - 2023-CP-00324-COA (Aug. 27, 2024)**

En Banc Opinion by Judge Emfinger - Concurrence in Part & Dissent in Part by Judge McDonald

Hon. William Hunter Nowell (Tunica County Circuit Court)

*Pro se* for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Alden Wiygul](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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## STACY V. STACY

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - DIVORCE - DISTRIBUTION OF ASSETS** - Chancery courts must apply the *Ferguson* factors to marital property to make an equitable distribution of the property; chancery courts are to consider the *Ferguson* factors on the record and support their decisions with findings of fact and conclusions of law for appellate review

**FAMILY LAW - DIVORCE - DISTRIBUTION OF ASSETS** - Appellate courts look to the chancery court's application of the *Ferguson* factors and do not conduct a new analysis to review questions of equitable distribution

**FAMILY LAW - DIVORCE - ALIMONY** - In deciding whether alimony is appropriate, chancery courts must apply the *Armstrong* factors; failure to do so is manifest error

**FAMILY LAW - DIVORCE - ALIMONY** - The chancery court is not required to analyze each *Armstrong* factor individually, but it is required to view the overall combination of the factors as a whole, opting to address individual factors at its discretion

### FACTS

Delaine and Sandy Stacy were married in November 1989. In 2020, Delaine and Sandy separated. Sandy filed a complaint for divorce, alleging adultery, habitual cruel and inhuman treatment, and habitual use of drugs as grounds for divorce. Sandy asked for exclusive use and ownership of the marital home and all marital property. Sandy also sought alimony and payment for all marital debts and attorney's fees. Delaine filed an answer and counterclaim, alleging habitual cruel and inhuman treatment, habitual use of drugs, and that the marriage was irretrievably broken. In 2021, Delaine and Sandy agreed to an irreconcilable differences divorce. The chancery court entered an order adjudicating the parties divorced and stated that the parties would withdraw their alleged fault-based grounds for divorce. Neither the order granting the divorce nor the agreement filed by the parties stated which issues were to be reserved for trial. In 2022, both parties testified at trial as to their accumulation of marital property during the marriage, their respective employment histories, monthly income, retirement accounts, monthly expenses, the purchase of the marital home, and other issues. The chancery court entered an order granting Delaine exclusive use and possession of the marital home and requiring Delaine to pay Sandy \$75,000 for her share in the value of the land and the home. The chancery court also awarded \$18,600 of Delaine's state retirement to Sandy, payable in monthly installments. The chancery court did not address Sandy's retirement account and awarded Sandy \$250 per month in rehabilitative alimony for twenty-four months. The chancery court did not explain or clarify how the decisions to award alimony and divide marital property were reached. Delaine appealed.

### ISSUES

Whether the chancery court erred in its consideration of (1) the *Ferguson* factors before dividing the marital assets of the parties and (2) the *Armstrong* factors before awarding Sandy alimony.

### HOLDING

(1) Because the chancery courts did not address any *Ferguson* factors on the record at the conclusion of testimony or in the written order, the chancery court erred when it failed to consider the *Ferguson* factors before dividing the marital assets of the parties. (2) Because the chancery court provided no explanation or clarification on how it reached its decision that Delaine would pay Sandy alimony, and because the chancery court did not mention any *Armstrong* factors to decide whether alimony was appropriate, the chancery court erred when it failed to consider the *Armstrong* factors before awarding Sandy alimony. Therefore, the Court of Appeals reversed and remanded the judgment of the Madison County Chancery Court.

### **Reversed & Remanded - 2023-CA-00219-COA (Aug. 27, 2024)**

Opinion by Judge Lawrence

Hon. Robert George Clark III (Madison County Chancery Court)

Charles Brad Martin & Mitchell Harry Tyner for Appellant - *Pro se* for Appellee

Briefed by [Anna Stack](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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## COURT OF APPEALS - POST-CONVICTION RELIEF

### HALEY V. STATE

#### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - STATUTORY BARS - TIME BAR** - Under the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”), a post-conviction relief motion is untimely unless it is filed within three years after the entry of the judgment of conviction for a guilty plea

**POST-CONVICTION RELIEF - TIME BAR - HOWELL RULE** - PCR claims are time-barred if filed beyond the three-year time period unless the claim fits within one of the express statutory exceptions

**POST-CONVICTION RELIEF - STATUTORY BARS - SUCCESSIVE MOTIONS** - Miss. Code Ann. § 99-39-23(6) states that any order dismissing or denying relief to a motion for post-conviction relief shall bar any second or successive motion, absent a statutory exception

**CRIMINAL PROCEDURE - NEW RULES - RETROACTIVE APPLICATION** - Decisions of the Mississippi Supreme Court are presumed to have retroactive effect and are applied to cases that are pending trial or that are on appeal, and not final at the time of the enunciation

#### FACTS

In 2015, Russell Haley was indicted on two counts of child exploitation. In 2017, Haley entered an open plea, where he was found guilty of only one count, and was sentenced to forty years, with ten years to serve and the remaining thirty years suspended. In 2019, Haley filed his first petition for post-conviction relief (“PCR”), claiming involuntary plea, ineffective assistance of counsel, and overbroad conditions for his post-release supervision, which was denied by the circuit court. Haley appealed, and the Court of Appeals affirmed the denial. In January 2023, Haley filed a second petition PCR. Fourteen days later, the Mississippi Supreme Court rendered the *Howell* decision which established that the statutory time bar for filing PCR claims was inflexible. As a result, the circuit court denied Haley’s petition again, finding it both untimely and successive. Haley appealed.

#### ISSUES

Whether the circuit court erred in (1) finding Haley’s PCR motion was time-barred and (2) retroactively applying *Howell*.

#### HOLDING

(1) Because Haley did not file his second PCR motion until over five years after his guilty plea, because the denial of Haley’s first PCR motion was considered a final judgment on the matter, and because the claim did not meet a statutory exception, the circuit court did not err in ruling that Haley’s second PCR petition was time-barred and successive-writ barred. (2) Because the circuit court ruled on Haley’s petition to apply the exception after *Howell* was rendered, the circuit court did not err by applying that case in the decision of Haley’s second PCR petition. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

**Affirmed - 2023-CP-00918-COA (Aug. 27, 2024)**

Opinion by Judge McCarty

Hon. M. James Chaney Jr. (Warren County Circuit Court)

*Pro se* for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Kelly Li](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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# HARDY V. STATE

## CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - APPELLATE REVIEW - PROCEDURAL BAR** - Issues not raised in a motion for post-conviction relief are procedurally barred on appeal

**POST-CONVICTION RELIEF - PETITION - MERIT** - When the trial court reviews a petition for post-conviction relief, the trial court has an obligation to review the original motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack to determine whether the defendant has proven the merit of the allegations by a preponderance of the evidence

**CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS** - When a defendant enters a guilty plea that is voluntarily, the defendant waives his constitutional rights under the Fourth and Sixth Amendments whether it be statutory or constitutional

**POST-CONVICTION RELIEF - EVIDENCE - UNSWORN STATEMENTS** - Unsworn statements, which have not been notarized as made before any official, are insufficient evidence to support a movant's allegations in a post-conviction relief motion

### FACTS

In November 2021, a grand jury indicted James Hardy for possession of a firearm by a felon. Due to Hardy's previous convictions for separate felony charges, resulting in a sentence of more than one year in custody, he was indicted as a non-violent habitual offender. Before entering a plea, Hardy's first court-appointed attorney was discharged as attorney of record in September 2022, presumably due to health issues. In October 2022, a plea hearing was held during which Hardy, now represented by attorney Cody Gibson, accepted the State's plea negotiation to drop the habitual-offender enhancement and pled guilty to the charge. The Madison County Circuit Court accepted Hardy's guilty plea and sentenced him to serve ten years in the custody of the Mississippi Department of Corrections. In June 2023, Hardy filed a motion for post-conviction relief ("PCR"), claiming that (1) his Sixth Amendment rights to counsel and to confront witnesses were violated; (2) he was not given an opportunity to challenge the evidence or present a defense; (3) he was not provided effective assistance of counsel; and (4) the search and seizure of the weapon violated the Fourth Amendment. When asked if any threats or force had been made against Hardy to incite a guilty plea, Hardy stated that he freely and voluntarily admitted guilt. Regarding his claim of ineffective assistance of counsel, Hardy only submitted unnotarized statements from friends and family alleging that Hardy's prior attorney did not meet with Hardy to discuss the case. The circuit court denied Hardy's PCR motion in August 2023. Hardy appealed.

### ISSUES

Whether (1) Hardy's plea was voluntarily given and (2) Hardy's Fourth and Sixth Amendment rights were violated.

### HOLDING

(1) Because Hardy failed to raise the issue of mental incompetence in his motion for post-conviction relief, and because the circuit court confirmed that Hardy understood the plea and was not coerced, Hardy's claim that his plea was involuntarily given was procedurally barred on appeal. (2) Because Hardy voluntarily entered a guilty plea, waiving his Fourth Amendment right regarding the alleged illegal search and his Sixth Amendment right about confronting witnesses and the right to counsel, and because the only evidence on record supporting Hardy's Sixth Amendment violation claim was unnotarized statements from friends and family alleging that Hardy's prior attorney did not meet with Hardy to discuss the case, there was no merit to his claim that his Fourth and Sixth Amendment rights were violated. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2023-CP-00970-COA (Aug. 27, 2024)**

Opinion by Chief Judge Barnes

Hon. Dewey Key Arthur (Madison County Circuit Court)

*Pro se* for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Senneca Evans](#)

Edited by [Sarah Schlager](#) & [Emily Phillips](#)

## **MAGEE V. STATE**

### **CIVIL - POST-CONVICTION RELIEF**

#### **POST-CONVICTION RELIEF - COURT-APPOINTED COUNSEL - DISCRETIONARY NATURE -**

Circuit courts have the discretion to appoint counsel in post-conviction relief proceedings for petitioners who qualify and display a need; however, petitioners do not have a right to such appointment

**POST-CONVICTION RELIEF - BINDING OF GUILTY PLEA - VOLUNTARINESS -** For a guilty plea to be considered knowing, intelligent, and voluntary, the defendant must be advised concerning the nature of the charge against him and the consequences of the plea

**APPELLATE PROCEDURE - POST-CONVICTION ISSUES - FAILURE TO RAISE -** Post-conviction issues that are not raised on direct appeal are procedurally barred from later consideration, and appellate courts will not hold a trial court in error for issues not presented to it for consideration

#### **FACTS**

Kendall Magee pled guilty to second-degree murder and possession of a firearm by a convicted felon in 2015. Magee subsequently filed a timely post-conviction relief (“PCR”) motion and asked the circuit court to vacate his guilty pleas, asserting that his pleas were involuntary, his trial attorney was ineffective, and the circuit court coerced him into pleading guilty. The circuit court granted an evidentiary hearing on Magee’s claims and denied his pre-hearing motions, including a motion for appointment of counsel, a motion to recuse, and a motion for a continuance of an evidentiary hearing. The circuit court found that Magee’s claims lacked merit and entered an order denying his PCR motion. Magee appealed, and the Court of Appeals affirmed the circuit court’s order denying his claims. Magee filed a petition for writ of certiorari, which the Supreme Court granted. The Supreme Court reversed both the circuit court’s and Court of Appeals’ decisions, holding that Magee was entitled to a second evidentiary hearing to determine whether his trial attorney misinformed him about the consequences of pleading guilty and whether he had entered his guilty pleas in reliance on the alleged incorrect advice. On remand, the circuit court held a second evidentiary hearing. Magee did not specifically renew his request for a court-appointed attorney during the second hearing but referenced his previously denied motion seeking court-appointed counsel. Magee presented several witnesses’ testimony that his trial attorney misinformed him about the possibility of an early release, while his trial attorney testified that he properly informed Magee about the consequences of accepting the plea deal and never told Magee that he would get out of prison early. Magee acknowledged that in both his signed “Know Your Rights Before You Plead” form and during his plea colloquy, he specifically stated that no one had promised him anything to induce his guilty pleas. The circuit court entered an order again denying Magee’s PCR motion. Magee appealed.

#### **ISSUES**

Whether (1) the circuit court erred by failing to appoint counsel to represent Magee at his second evidentiary hearing; (2) Magee’s trial attorney misinformed him about the consequences of pleading guilty, rendering his guilty pleas involuntary; and (3) Magee’s trial attorney provided ineffective assistance of counsel by failing to adequately advise him of his possible defenses to the crimes charged and by failing to sufficiently investigate his case.

#### **HOLDING**

(1) Because Magee did not have a right to appointed counsel, and the record did not reflect his need for counsel, the circuit court did not err or abuse its discretion in denying appointment. (2) Because substantial credible evidence showed that Magee understood his rights and the implications of his plea deal and sentencing proceedings, Magee’s trial attorney did not misinform him, and Magee knowingly, intelligently, and voluntarily entered his guilty pleas. (3) Because Magee failed to raise ineffective assistance of counsel on his first appeal, the issue was procedurally barred from consideration, and the Court of Appeals declined to address it. Therefore, the Court of Appeals affirmed the judgment of the Walthall County Circuit Court.

**Affirmed - 2023-CP-00008-COA (Aug. 27, 2024)**



Opinion by Judge Smith  
Hon. David H. Strong Jr. (Walthall County Circuit Court)  
*Pro Se* for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee  
Briefed by [Madeline McMaster](#)  
Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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## PRYER V. STATE

### CIVIL - POST-CONVICTION RELIEF

**CIVIL PROCEDURE - JUDGMENT - JUDGMENT RELIEF** - On motion, the court may relieve a party or his legal representative from a final judgment, order, or other proceeding for any other reason justifying relief from the judgment but is reserved for “extraordinary and compelling circumstances”

**CRIMINAL PROCEDURE - PROBATION REVOCATION - EVIDENTIARY STANDARD** - If a court finds by a preponderance of the evidence, that a probationer or person under post-release supervision has committed a felony, the court may revoke his probation and impose any and all of the sentence

**POST-CONVICTION RELIEF - PROBATION REVOCATION - DUE PROCESS** - For probation revocation hearings, only minimum due process standards are required; these include: written notice of the claimed violations, disclosure to the probationer of the evidence against him, an opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses (unless a hearing officer finds good cause for not allowing such confrontation), a neutral and detached hearing body or officer, and a written statement by the fact finder as to the evidence relied on and the reasons for revoking probation

### FACTS

In 2005, Timothy Pryer entered a guilty plea to sexual battery. The circuit court sentenced Pryer to twenty years in Mississippi Department of Corrections (“MDOC”) custody, with five years suspended and five years of post-release supervision (“PRS”), also requiring him to register a sex offender upon release. After he was released in 2020, Pryer called MDOC stating that he was residing in Missouri and living with his mother. He was asked to return as he had violated the terms of his probation by leaving Mississippi without MDOC authorization. When he failed to return, MDOC filed to revoke Pryer’s PRS citing his failure to report and his failure to remain within the specified area. Pryer was arrested several days later in Missouri and transported to Mississippi in December 2020. After a revocation hearing, the trial court ruled that Pryer could remain in Missouri if he could be “properly accepted by Missouri and be under their supervision” for the remainder of his PRS. Missouri denied Pryer’s residence because his sex offender status prohibited him from living in his mother’s residence as it was within 1,000 feet of a daycare. Although he did attempt to register as a sex offender in Missouri, he was not “grandfathered” in because he did not live at the residence in 2008, the year the daycare near the residence was built. The Missouri sheriffs ordered Pryer to vacate the residence within thirty days. MDOC arrested Pryer for his probation violations, however, before the thirty-days had expired. Since Pryer had failed to register as a sex offender in Missouri upon his release, the trial court found Pryer in violation of his PRS terms and revoked his suspended five-year sentence. Pryer appealed the revocation decision and was dismissed by the Supreme Court. Pryer then filed a petition for post-conviction relief, and the trial court denied the petition stating that, besides his technical violations, Pryer had committed a felony by residing somewhere within 1,000 feet of a childcare facility. Pryer filed a motion for reconsideration which was also denied. Pryer appealed.

### ISSUE

Whether the trial court erred in revoking Pryer’s five-year suspended sentence based on the finding that he had committed a felony during his PRS.

### HOLDING

Because MDOC made no claim in the petition for revocation that Pryer had committed a felony, and because Pryer had only committed technical violations, the trial court violated Pryer’s due process rights by revoking his suspended

sentence, and the denial of the motion to reconsider was improper. Therefore, the Court of Appeals reversed the judgment of the Itawamba County Circuit Court.

**Reversed & Remanded - 2023-CP-00568-COA (Aug. 27, 2024)**

Opinion by Chief Judge Barnes

Hon. Paul S. Funderburk (Itawamba County Circuit Court)

*Pro se* for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Elizabeth Murphree](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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## **COURT OF APPEALS - CRIMINAL CASES**

### **EASTERLING V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - ARGUABLE ISSUES - LINDSEY BRIEF** - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant, counsel may file a brief indicating in good faith a lack of arguable issues on appeal and request an extension so the defendant can file a pro se brief

**CRIMINAL PROCEDURE - SUPPLEMENTAL BRIEF - FAILURE TO FILE** - When failing to file a supplemental pro se brief during an appeal as a matter of right, and no arguable issues have been presented, the appellate court may independently review the record and convey its decision on the appeal

#### **FACTS**

In October 2020, Lieutenant Chris Jones saw Alexander Easterling run a stop sign. Jones pulled Easterling over and asked Easterling for a driver’s license and proof of insurance. After Easterling presented Jones with a Mississippi identification card because he did not have a license, Jones asked Easterling to step out of the vehicle. Jones asked if there was anything illegal in the car and told Easterling to be honest with him, due to Easterling’s behavior and Jones seeing a plastic sandwich bag with the end torn off. Easterling then responded that he had Klonopin pills, crystal methamphetamine, and a “meth pipe” in the car. Jones informed Easterling that he was going to be detained based on his admission and the illegal substance in the car. When Jones began to search the vehicle, he pulled down the sun visor, and the methamphetamine fell out. Jones found the pills and methamphetamine in two separate bags contained within a single bag, so he separated the pills and methamphetamine in two separate evidence bags. Additionally, Jones found the meth pipe between the seats and the console area. At trial, Jones testified about his encounter with Easterling, and both the court and the jury saw the body-camera footage that captured the entire traffic stop. Joshua Bryant, a narcotics investigator for the Magee Police Department at the time of Easterling’s arrest, testified for the State at trial that he was responsible for transporting the items found in Easterling’s vehicle to the Mississippi Forensics Lab. Bryant also testified that the evidence produced in trial was in the same condition as it had been when he transported it and that the evidence did not appear to be tampered with in any way. Easterling then made a motion for directed verdict, asserting the State did not prove beyond a reasonable doubt that Easterling was the one who actually possessed the methamphetamine. The court denied Easterling’s motion, and Easterling did not present any witness testimony at trial. The jury convicted Easterling of possession of a controlled substance. In a post-trial motion hearing, Easterling filed a motion for a new trial, and the court denied the motion. Easterling appealed.

#### **ISSUE**

Whether there were any arguable issues on appeal to overturn Easterling’s possession of a controlled substance conviction.

#### **HOLDING**

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Easterling never filed the granted supplemental pro se brief, there were no arguable issues on appeal to overturn Easterling’s possession of a controlled substance conviction. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Circuit Court.

**Affirmed - 2023-KA-00610-COA (Aug. 27, 2024)**

Opinion by Judge Westbrook

Hon. Stanley Alex Sorey (Simpson County Circuit Court)

Justin T. Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Andrew Grant](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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## HARRIS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - SENTENCING - LIFE IMPRISONMENT** - Prisoners have no constitutionally recognized liberty interest in parole

**CRIMINAL PROCEDURE - SENTENCING - LIFE IMPRISONMENT** - Miss. Code Ann. § 97-3-21 provides that a defendant convicted of murder shall be sentenced to life imprisonment

**CRIMINAL PROCEDURE - SENTENCING - PAROLE ELIGIBILITY** - Miss. Code Ann. § 47-7-3(1)(d) provides that no person sentenced for murder in the first degree, whose crime was committed on or after June 30, 1995, or murder in the second degree, as defined in Section 97-3-19, shall be eligible for parole; this provision must be read in conjunction with others that detail which classes of crimes permit the possibility of parole following conviction

### FACTS

In 2001, Billy Ray Harris was convicted of depraved heart murder. At that time, Mississippi law did not recognize different degrees of murder. Instead, Mississippi law classified murder into categories such as deliberate design murder and depraved heart. The trial court sentenced Harris to life imprisonment without parole eligibility. In 2022, the Mississippi Supreme Court overturned Harris’s life-without-parole sentence and remanded his case to the trial court for re-sentencing. On remand, Harris requested that the trial court sentence him to life in prison with the possibility of parole. The trial court sentenced Harris to life in prison. Harris appealed.

### ISSUES

Whether Harris’s lack of parole eligibility (1) violated his constitutional rights; and (2) exceeded the statutory maximum.

### HOLDING

(1) Because Harris, as a prisoner, had no constitutionally recognized liberty interest in parole, Harris’s lack of parole eligibility did not violate his constitutional rights. (2) Because the court must read Miss. Code Ann. § 97-3-21 and Miss. Code Ann. § 47-7-3 in conjunction with one another, Harris’s sentence was not illegal. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2023-KA-00460-COA (Aug. 27, 2024)**

Opinion by Judge Lawrence

Hon. Dewey Key Arthur (Madison County Circuit Court)

Tamarra Akiea Bowie for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Kyra Childress](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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## LA FLEUR V. STATE

### CRIMINAL - FELONY

**CONSTITUTIONAL LAW - DOUBLE JEOPARDY - COURT EVALUATION** - A court's evaluation of evidence must culminate in a final action or ruling to suffice for acquittal and trigger double jeopardy protections  
**CRIMINAL PROCEDURE - ACQUITTAL - COMMENTS FROM THE COURT** - Comments, remarks, impressions, thoughts, and intentions from the court lack the requisite finality to constitute acquittal

#### FACTS

In January 2021, Jay LaFleur was indicted by a grand jury for attempted murder, aggravated assault, and shooting into a dwelling for events that occurred in July 2020. The indictment incorrectly stated the term in which the grand jury returned the indictment. The trial court entered an order amending the grand jury term, but also errantly amended the date of the alleged incident to September 2015. LaFleur did not object to the order before trial. During the trial, all evidence pointed to the events occurring in July 2020, and the trial court instructed the jury that the State had to prove the crimes occurred in July 2020. The jury convicted LaFleur of attempted murder and simple assault but acquitted him of shooting into a dwelling. LaFleur moved for a judgment notwithstanding the verdict ("JNOV") or a new trial based on the defective indictment. The trial court granted LaFleur a new trial. The State filed a motion to reconsider the new trial which the trial court denied. In its denial, the trial court stated that the date of the offense was an essential element of the charge which the State did not prove. LaFleur then moved to have all charges dismissed on double jeopardy grounds, stating the trial court's admission constituted acquittal. The trial court granted LaFleur's motion only for the shooting into a dwelling charge for which LaFleur was acquitted at trial and for the aggravated assault charge for which he was convicted of a lesser-included offense. LaFleur appealed.

#### ISSUE

Whether the Double Jeopardy clauses of the United States and Mississippi Constitutions prohibited the State from retrying LaFleur for attempted murder.

#### HOLDING

Because the trial court's statement that the date of the offense was an essential element of the charge which the State did not prove did not constitute an acquittal, and because the trial court never made any determination as to LaFleur's culpability, the Double Jeopardy clause did not prohibit a second trial. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

#### **Appeal Dismissed - 2022-KA-00500-COA (Aug. 27, 2024)**

Opinion by Presiding Judge Wilson

Hon. Michael M. Taylor (Lincoln County Circuit Court)

William Charles Bell for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

#### **Consolidated with:**

#### **Affirmed - 2022-IA-01245-COA (Aug. 27, 2024)**

Hon. Michael M. Taylor (Lincoln County Circuit Court)

William Charles Bell for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Kennedy Guest](#)

Edited by [Robert "Duncan" Jones](#) & [Emily Phillips](#)

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## WALLACE V. STATE

### CRIMINAL - FELONY

**CONSTITUTIONAL LAW - TRIAL IN ABSENTIA - WAIVER** - According to Miss. R. Crim. P. 10.1(b)(1)(B), a defendant may waive his right to be present at every stage of his trial if the court finds that his absence was voluntary and constitutes an intelligent waiver of the right to be present

**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - IMPROPER REMARKS** - A

prosecutor's statement in closing arguments is considered improper or out of bounds when it is so inflammatory that the trial court should object to it on its own motion

**CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - BURDEN OF PROOF SHIFT**- The prosecution does not shift the burden of proof to the defense when making mere comments regarding the weaknesses of the defense's case during closing statements

**CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF THE EVIDENCE** - A new trial is granted only when, after weighing the evidence in the light most favorable to the verdict, the court finds that the jury's verdict is so contrary to the overwhelming weight of evidence that to allow it to stand would sanction an unconscionable injustice

## **FACTS**

The Express Shop convenience store in Tupelo was robbed by an individual described as a skinny black male, approximately five feet tall, wearing black clothing and a ski mask, who brandished a handgun and demanded money from the store attendant. After obtaining the money, the suspect fled on foot, and the police were later called to the scene. Testimony at trial revealed that the Tupelo Police Department ("TPD") employed several officers and a tracking and narcotics detection dog in the search for the suspect near the premises of the store. Surveillance footage containing video of the robbery was also recovered from the Express Shop security cameras. The dog eventually led the officers to the front door of a nearby home, where Charminder Wallace was found. Wallace fit the description of the suspect given to the TPD by the store attendant, and two distinct items of clothing that the suspect in the surveillance video appeared to be wearing were recovered from the house where Wallace was found. TPD did not recover the gun used in the robbery or the stolen money. After eliminating other people encountered around the premises as suspects, the officers arrested Wallace in connection with the armed robbery of the Express Shop. A grand jury indicted Wallace on one count of armed robbery, and a trial ensued. On the morning of the trial, Wallace allegedly experienced transportation issues and failed to be present in the courtroom when the trial was supposed to start. After Wallace's counsel conferred with the trial judge off the record, the trial court started voir dire proceedings without Wallace present. Wallace's counsel explained that he communicated with Wallace that he needed to be present at trial and that Wallace was having trouble securing a mode of transportation from his hometown to the court. He eventually appeared after the parties made their challenges for cause but before they began preemptory strikes. The trial court determined that Wallace was advised and was aware of the time and date of the trial, and his failure to appear for voir dire was voluntary and had no legitimate reason. Wallace failed to preserve this issue for appellate review by not objecting to the trial court's decision to proceed in his absence. During closing arguments, the State commented on Wallace's lack of evidence and the inadequacies and weaknesses of Wallace's defense. Wallace's counsel also failed to object to these statements, statements that he later argued prejudiced his client. At the conclusion of the trial, the jury found Wallace guilty of armed robbery. The trial court sentenced him to fifty years, with ten years suspended, followed by five years of post-release supervision. Further, Wallace's motion for judgment notwithstanding the verdict or, alternatively, a new trial was denied. Wallace appealed.

## **ISSUES**

Whether (1) the trial court erred by conducting voir dire in Wallace's absence; (2) the State committed prosecutorial misconduct during closing arguments; and (3) the verdict was against the overwhelming weight of the evidence.

## **HOLDING**

(1) Because Wallace was aware of the time and date of the proceedings and his failure to appear was willful, voluntary, and deliberate without legitimate reason, and because Wallace failed to allege that he suffered any prejudice due to his inability to assist his attorney in selecting a jury, the trial court did not abuse its discretion by conducting the voir dire proceedings in his absence. (2) Because making mere comments regarding weaknesses in the defense's case during closing arguments was permissible, and because commenting on the defense's failure to offer any evidence to counter the State's evidence did not shift the burden of proof to Wallace and was not erroneous, the State did not commit prosecutorial misconduct. (3) Because the eyewitness testimony, physical evidence, and the results of the police dog's tracking efforts did not fail to support the jury's verdict as to result in an unconscionable injustice, the verdict was not

against the overwhelming weight of evidence, and the trial court did not abuse its discretion by denying Wallace's motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

**CONCURRENCE IN PART & DISSENT IN PART**

Judge Westbrook argued that the majority's analysis of the issue regarding trial in absentia was flawed. She argued that Wallace's efforts to communicate with his counsel and to arrive at the courtroom as soon as possible were an indicator that his absence during voir dire was not willful, voluntary, and deliberate. Therefore, the trial court erred by conducting voir dire in his absence.

**Affirmed - 2023-KA-00071-COA (Aug. 27, 2024)**

En Banc Opinion by Presiding Judge Carlton - Concurrence in Part & Dissent in Part by Judge Westbrook

Hon. Paul S. Funderburk (Lee County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Mira Radu](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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